



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

LEBANON SCHOOL DISTRICT :
:
Complainant :
:
v. : CASE NO. T-0240:20
: M-0585:4
:
LEBANON EDUCATION ASSOCIATION: DECISION NO. 95-109
:
and :
:
LEBANON SUPPORT STAFF :
ASSOCIATION/NEA-NEW HAMPSHIRE: :
:
Respondent :
:

APPEARANCES

Representing Lebanon School District:

Bradley F. Kidder, Esq., Counsel

Representing Lebanon Education Association/Lebanon Support Staff/NEA-New Hampshire:

James Allmendinger, Esq., Counsel

Also appearing:

John Fontana, S.A.U. #32
John Fessenden, NEA-NH
Paula Dutille, NEA
Sarah Root, NEA
David Wallace, NEA
Bill Cartier, NEA
Ed Ballam, Valley News

BACKGROUND

The Lebanon School District (District) filed unfair labor practice (ULP) charges against the Lebanon Education Association

(LEA) and the Lebanon Support Staff Association (LSSA), NEA New Hampshire on August 14, 1995 alleging violations of RSA 273-A:5 II (b), (d) and (f) which resulted from the Associations' permitting their representative to bypass the Superintendent and deal directly with school board members by addressing correspondence directly to them or simultaneously providing them with copies of documents as they were transmitted to the Superintendent. The LEA and LSSA filed a consolidated answer on September 15, 1995. After granting a request for a continuance on October 12, 1995, the PELRB heard this matter on October 24, 1995.

FINDINGS OF FACT

1. The Lebanon School District is a "public employer" within the meaning of RSA 273-A:1 X.
2. The Lebanon Education Association, NEA-NH, is the duly certified bargaining agent for teachers and professional personnel employed by the District. The Lebanon Support Staff Association, NEA-NH, is the duly certified bargaining agent for support staff employed by the District.
3. During the course of dealings between both Associations and the District, they were usually represented by the late John Fessenden, formerly UniServ Director for the Upper Valley Region, NEA, New Hampshire. Each association has its own collective bargaining agreement (CBA) with the District and each CBA contains a multi-level grievance procedure. The Superintendent, or his/her designee, reviews grievances at the second step of the grievance process. If it is not successfully resolved at the Superintendent's level, the grievance proceeds to the school board (third step) and, ultimately, to arbitration (fourth step).
4. During and after 1994-95 school year, Fessenden has communicated with members of the Lebanon School Board on a number of occasions, either directly (District Ex. No. 1) or by providing copies of correspondence directed to the Superintendent (Dist. Ex. Nos. 5, 6, 7, 9, 10, 12, 13, 14, 15, 16, 17, 18, 20, 21, 23, 24, 25, 29, 30, 31, 33, 34, 35, 37 (same as 18),

39 (same as 31), 40 (same as 20), 41 (same as 21), 44 (same as 23), 45 (same as 24), 46 (same as 33), 49 and 50 (same as 34). Much of this correspondence concerned grievances in progress and/or involved information being provided to school board members contemporaneously with its being provided to the superintendent, i.e., not after the superintendent had an opportunity to receive, review, investigate and decide the issue or issues being presented to him.

5. On July 27, 1995, a former member of the Lebanon School Board sent Fessenden a letter reminding him that her term had expired and asking to be removed from his mailing list. (District Ex. No. 51) Fessenden responded by letter of August 10, 1995 and complied. (Assn. Ex. No. 1) In his letter of August 10th, Fessenden noted that this particular individual was the only person now or formerly a member of the Lebanon School Board who responded to his letter of July 10, 1995 (District Ex. No. 46) by asking that her name be removed from his mailing list. Conversely, Superintendent Fontana testified that he had previously asked Fessenden to stop sending copies of correspondence to board members but that he persisted in doing so even after that request.

DECISION AND ORDER

As public officials, school board members can, and must, expect to receive information and inquiries from the general public concerning school district matters. By the same token, they are charged with certain responsibilities pertaining to the operation of the district. One of those responsibilities is the handling of grievances at step three of the grievance procedure negotiated by the parties. As this is a negotiated procedure found in the CBAs between the district and the LEA and LSSA, the parties are charged with the responsibility to be familiar with the procedures they negotiated and to adhere to them.

It is at the point of adhering to the negotiated grievance procedure that Fessenden's actions have transgressed what was negotiated. His involving members of the school board in the grievance procedure prior to either the disposition by the superintendent or the passage of a sufficient amount of time so that one could conclude that the superintendent had defaulted or determined that he was not going to take action within the

prescribed amount of time (ten days, in this case) constituted a ULP for two reasons. First and simply, it violated the CBA because it did not follow the procedures the parties negotiated for themselves. Second, by involving the board members prematurely, the efficacy of the grievance process may have been compromised. In finding that these actions were violative of RSA 273-A:5 II (f), we direct both the LEA and the LSSA, through their agent or agents, to cease and desist from this practice.

So ordered.

Signed this 15th day of November . 1995.



EDWARD J. HASELTINE
CHAIRMAN

By unanimous vote. Chairman Edward J. Haseltine presiding. Members Richard W. Roulx and Richard E. Molan, Esq., present and voting.